

UN-REDD Programme¹ Guidelines on Free, Prior and Informed Consent

Draft for Comment -- December 2011

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¹ The [UN-REDD Programme](#) is a United Nations Collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD) in developing countries. The Programme was launched by Secretary-General Ban Ki-moon and Jens Stoltenberg, Prime Minister of Norway on 24 September 2008 to assist developing countries prepare and implement national REDD+ strategies, and builds on the convening power and expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP).

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1. Introduction

Indigenous peoples and forest-dependent communities are essential to the success of REDD+ given that the majority of the world's remaining forests in developing countries are located in their ancestral and customary lands, where they have for centuries played a historical and cultural role in the sustainable management of these forests with relative success. Inadequate mechanisms for effective participation of local communities in land use decisions could seriously compromise the delivery of both local and global benefits and the long-term sustainability of REDD+ investments.

Recognizing the critical role of indigenous and local communities to the long-term sustainability and effectiveness of REDD+, the UN-REDD Programme has prioritized stakeholder engagement from its inception. Following a series of extensive consultations with indigenous peoples and local communities, the UN-REDD Programme developed Guidelines on Stakeholder Engagement, which have since been harmonized with guidance from the Forest Carbon Partnership Facility (FCPF) on the same topic. These Joint FCPF UN-REDD [Guidelines on Stakeholder Engagement for REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities](#) (hereafter called “*Joint Guidelines*”) focus on principles for effective participation and consultation and concrete guidance on planning and implementing consultations.

A key component of effective stakeholder engagement and consultation is the right to free, prior, and informed consent (FPIC). This document therefore takes the *Joint Guidelines* one step further by outlining a normative, policy and operational framework for UN-REDD Programme partner countries to seek FPIC. This will in turn support UN-REDD Programme partner countries to comply with UN-REDD Programme guidelines and principles, including the requirement to undertake broad consultations and seek consent at the community level as and when appropriate, as determined by the partner country in consultation with relevant rights-holders.

This document is based on recommendations received during three regional consultations on FPIC and grievance mechanisms², held in Viet Nam (June 2010), Panama (October 2010), and Tanzania (January 2011); and also responds to feedback received from the UN Special Rapporteur on the Rights of Indigenous Peoples³ (February 2011).

The Guidelines also draw on the historical experience of select cases relevant to the integration of FPIC into national strategies and activities, including the following lessons learned:

- National level policies and procedures detailing requirements for community engagement as a precondition of project approval can assist proponents in engaging with communities.
- If designed in a culturally appropriate manner that is compatible with local communities’ own governing structures, national or subnational processes can help support traditional rights to lands, territories, and resources when faced with competing use interests.
- An unwillingness to recognize and respect community rights to resources can make FPIC processes more difficult and limit prospects for achieving conservation or sustainable management outcomes.
- Consent is an ongoing process and is more achievable when the planning process is responsive to community needs. All parties should approach FPIC as a process rather than a one-time decision.

² For more information, see: [Asia- Pacific workshop report](#); [Latin America and the Caribbean workshop report](#); [Africa workshop report](#)

³ Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya, <http://www2.ohchr.org/english/issues/indigenous/rapporteur/>

- Negotiations may be more successful when they incorporate the community’s perspective of what constitutes equitable benefit-sharing.
- The failure to obtain consent from communities for a given protected area proposal does not necessarily preclude a continued commitment by local communities to conservation objectives. Additionally, continued engagement can lead to alternative solutions for which the communities would provide consent.⁴

Recognizing that there is as of yet, no internationally agreed definition of FPIC or a mechanism for its implementation, and that FPIC will vary across regions, countries and communities, the application of these guidelines will have to be tailored to specific contexts.

1.1 Objective

The aim of this document is to outline a normative, policy and operational framework for UN-REDD Programme partner countries to seek FPIC, as and when appropriate, as determined by the partner country in consultation with relevant rights-holders.

1.2 Scope

The primary users of these Guidelines will be UN-REDD Programme partner countries, including those with National Programmes⁵ as well as those receiving targeted support.⁶

The Guidelines apply to national level activities supported by the UN-REDD Programme, They also apply to activities supported by any of the three UN partner agencies to the UN-REDD Programme (FAO, UNDP, UNEP) in their role as a Delivery Partner under FCPF.

FPIC is most often outlined in the context of the rights of indigenous peoples because of their unique circumstances, notable marginalization and special status in international law.⁷ Recognizing that REDD+ activities may impact other forest-dependent communities that have customary and/or legal rights to the territory and/or resource in question (hereafter referred to as ‘local communities’ or ‘other rights-holders’), these Guidelines, in line with the human rights-based approach outlined below, require partner countries to seek consent from these groups, when relevant, as well.

⁴ [FPIC and UN-REDD: Legal and Practical Considerations](#), Center for International Environmental Law (CIEL), 2010, prepared for the UN-REDD Programme.

⁵ Partner countries are responsible for implementing National Programmes with technical and financial backstopping from the three founding UN partner agencies (FAO, UNDP, UNEP). refer to partner country governments and UN-REDD Programme staff supporting the implementation of the programme in the country.

⁶ Targeted support is demand-driven specific support under one or more of the UN-REDD Programme’s six work areas. All UN-REDD Programme partner countries are eligible to receive targeted support, depending upon availability of funds and capacity of the three agencies. In practical terms, targeted support means specific technical advice and other capacity strengthening support that a country may request on a critical REDD+ readiness aspect it has identified, which is not covered through other multilateral or bilateral initiatives and where the UN-REDD Programme has comparative advantage to provide such support. It can be provided in the form of backstopping of National Programmes, or other specific technical support under the Global Programme on a critical aspect of REDD+ readiness in a country, which is not available through National Programmes or through other initiatives.

⁷ Some human rights conventions have been interpreted to extend the right of FPIC to other communities including: the Convention on the Elimination of Racial Discrimination, the International Covenant on Civil and Political Rights, and the Convention on Biological Diversity. For more information, see Herz, S, J. Sohn, and A. La Vina. 2007. [Development Without Consent: The Business Case for Consent](#). WRI, Washington DC.

1.3 Normative Framework: Human Rights-Based Approach

The UN-REDD Programme follows a human rights-based approach to programming and policy. This approach is outlined in the [UN Common Understanding on the Human Rights-Based Approach to Development Cooperation](#) (2003).⁸ The Common Understanding reiterates the UN commitment to further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments by ensuring that these instruments guide all development cooperation and programming. The Common Understanding underlines the essential role of development cooperation in supporting the capacity of duty-bearers (e.g. States) to meet their obligations and of rights-holders to claim their rights.

The duty to consult with indigenous peoples and obtain their free, prior and informed consent is a corollary of a myriad of universally accepted human rights, including the right to self-determination, right to participation, right to property, right to cultural integrity and right to equality, that are contained in numerous international human rights instruments.⁹

The specific mandate and obligation for States, the UN and its programmes to promote and respect the right to FPIC are outlined in the following agreements:

- [United Nations Development Group \(UNDG\) Guidelines on Indigenous Peoples Issues](#) (2008): The UNDG Guidelines are based on several existing international instruments regarding indigenous peoples, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples, 1989 (No.169) (“ILO Convention 169”). The UNDG Guidelines provide a policy and operational framework for implementing a human rights based approach to development for and with indigenous peoples. Included as a key result of such an approach is the application of the principle of free, prior and informed consent in development planning and programming.
- [United Nations Declaration on the Rights of Indigenous Peoples](#) (2007)¹⁰: The following articles of the UNDRIP are particularly relevant with regard to States and UN obligations to uphold FPIC:

“Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them...

Article 32

- 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
- 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent*

⁸ *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*. UNDG, 2003. For more information on the Common Understanding, please see <http://hrbportal.org/>

⁹ Including in the statements and decisions, respectively, of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Inter-American Court of Human Rights, [A/HRC/12/34](#), para. 41

¹⁰ UNDRIP was adopted by the General Assembly on 13 September 2007 by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions. Since its adoption, Australia, New Zealand, Canada and the United States have all reversed their positions and now endorse the Declaration.

prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources...

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established...

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”

- [Convention on Biological Diversity \(CBD\) \(1992\)](#)¹¹. Article 8 (j) of the Convention requires that the traditional knowledge of indigenous peoples and local communities may only be used with their approval:

*“Access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices.”*¹²

- [International Labour Organization Convention 169 on Indigenous and Tribal Peoples](#) (1989)¹³ is a legally binding document and requires, among other things, that States Parties obtain the FPIC of indigenous and tribal peoples before resettling them.

In the context of REDD+ and the UN-REDD Programme, the [Cancun Agreements decision on REDD+](#) provides further rationale to apply FPIC, stating that:

“... when undertaking activities referred to in paragraph 70 of this decision [on REDD+], the following safeguards should be promoted and supported:

(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;

(d) The full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of this decision...”

¹¹ The Convention on Biological Diversity is a binding treaty that has been ratified by 193 countries as of 2011.

¹² [CBD CoP5 Decision V/16](#)

¹³ ILO Convention 169 was adopted on 27 June 1989 by the General Conference of the ILO at its 76th session. Its entry into force was 5 September 1991. It has been ratified by twenty-two countries as of September 2011.

2. Defining Free, Prior and Informed Consent

FPIC is the collective right of indigenous peoples to participate in decision making and to give or withhold their consent to activities affecting their lands, territories and resources or rights in general. Consent must be freely given, obtained prior to implementation of activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation: free, prior and informed consent.¹⁴

This rights-based principle of FPIC applies to REDD+ discussions regarding potential changes in resource uses that could impact the livelihoods of indigenous and other local communities. Under these circumstances, consistent with international human rights instruments and other treaty obligations, potentially impacted peoples have the right to participate in and consent to or withhold consent from a proposed action. This principle holds that communities should have the right to withhold consent at key decision-making points occurring both prior to and during a proposed activity.¹⁵ FPIC applies to proposed actions (decisions, activities, projects, etc.) that have the potential to impact the lands, territories, and resources upon which indigenous peoples depend for their cultural, spiritual and physical sustenance, well-being, and survival.¹⁶

The duty of States to consult with indigenous peoples in decisions affecting them is aimed at reversing the historical pattern of exclusion from decision-making in order to avoid the future imposition of important decisions on indigenous peoples, allowing them to continue to live as distinct communities on lands to which their cultures remain attached.¹⁷

FPIC is best articulated in the UNDRIP, with some of the most relevant rights in the context of REDD+ listed below:

- The right to participate in decision-making through representatives chosen by themselves in accordance with their own procedures (Art. 18);
- The right to be consulted in good faith, through representative institutions, with the objective of seeking free, prior and informed consent, before the adoption and implementation of legislative or administrative measures that may affect them (Art. 19);
- The right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired (Art. 26);
- The right to determine and develop priorities and strategies for the development or use of their land or territories and other resources (Art. 32);
- The right to be consulted in good faith through representative institutions, with the objective of seeking free and informed consent, prior to the approval of any project affecting indigenous peoples' lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (Art. 32);
- The right to promote, develop, and maintain institutional structures and distinctive customs, spirituality, traditions, procedures, practices (Art. 34).

¹⁴ Colchester, M. and MacKay, F. (2004). *In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent*, Forest Peoples Programme, pp. 8-14.

¹⁵ Perrault, A., Herbertson, K. and Lynch, O. (2007). *Partnerships for Success in Protected Areas: The Public Interest and Local Community Rights to Prior Informed Consent (PIC)*, Georgetown International Environmental Law Review XIX:3, p. 477.

¹⁶ Center for International Environmental Law (CIEL), (2010) [FPIC and UN-REDD: Legal and Practical Considerations](#), for the UN-REDD Programme.

¹⁷ [A/HRC/12/34](#), para. 41.

FPIC differs from consultation in the way decision-making authority is exercised and legitimated.¹⁸ While consultation requires an exchange of information among project sponsors and affected communities, FPIC enables communities to participate in decision-making processes, negotiate fair and enforceable outcomes, and withhold their consent to a programme if their needs, priorities, and concerns are not adequately addressed. FPIC processes can empower communities by changing the basic terms of engagement and can help even the most marginalized or disenfranchised groups participate in the decision making process and negotiate an equitable share of programme benefits.¹⁹

2.1 Defining the Elements of FPIC

Building on the definition of FPIC endorsed by the UN Permanent Forum on Indigenous Issues in 2005²⁰, each element of FPIC can be further elaborated:

Free

Free refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed:

- Stakeholders determine process, timeline and decision-making structure;
- Information is transparently and objectively offered at stakeholders' request;
- Process is free from coercion, bias, conditions, bribery or rewards;
- Meetings and decisions take place at locations and times and in languages and formats determined by the stakeholders; and
- All community members are free to participate regardless of gender, age or standing.

Prior

Prior refers to a period of time in advance of an activity or process when consent should be sought, as well as the period between when consent is sought and when consent is given or withheld.

- Prior implies that time is provided to understand, access, and analyze information on the proposed activity. The amount of time required will depend on the decision-making processes of indigenous peoples and other local communities;
- Information must be provided before activities can be initiated, at the beginning or initiation of an activity, process or phase of implementation, including conceptualization, design, proposal, information, execution, and following evaluation; and
- The decision-making timeline established by indigenous peoples must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration.

¹⁸ See Annex I for more information on different types of participation.

¹⁹ [*Herz, S., Sohn, J. and La Vina, A. \(2007\). Development Without Conflict: The Business Case for Community Consent*](#), World Resources Institute.

²⁰ Report of the *International Workshop on Methodologies Regarding Free Prior and Informed Consent* E/C.19/2005/3, endorsed by the UNPFII at its Fourth Session in 2005.

Informed

Informed refers to the type of information that should be provided prior to seeking consent and also as part of the ongoing consent process.

Information should:

- Be accessible, clear, consistent, accurate, and transparent;
- Be delivered in appropriate language and format (including radio, video, graphics, documentaries, photos);
- Be objective, covering both the positive and negative potential of REDD+ activities and consequences of giving or withholding consent;
- Be complete, covering the spectrum of potential social, financial, political, cultural, environmental impacts, including scientific information with access to original sources in appropriate language;
- Be delivered in a manner that strengthens and does not erode indigenous or local cultures;
- Be delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers;
- Be delivered with sufficient time to be understood and verified;
- Reach the most remote, rural communities, women and the marginalized; and
- Be provided on an ongoing and continuous basis throughout the FPIC process.

Consent

Consent refers to the decision made by indigenous peoples and other local communities reached through their customary decision-making process. The collective right to give or withhold consent applies to all projects, activities, legislative and administrative measures and policies (and their associated processes and phases) that directly impact the lands, territories, resources, and livelihoods of indigenous peoples and other local communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community.

Consent is:

- A freely given decision that may be a “Yes” or a “No,” including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges;
- A collective decision determined by the affected peoples (e.g. consensus, majority, etc.);
- The expression of rights (to self-determination, lands, resources and territories, culture); and
- Given or withheld in phases, over specific periods of time for distinct stages or phases of REDD+.

3. UN-REDD Programme Policy on Applying Free, Prior and Informed Consent

3.1 What is Required of UN-REDD Programme Partner Countries?

As outlined in the draft UN-REDD National Programme Guidelines,²¹ the FCPF and UN-REDD Readiness Preparation Proposal (R-PP) Template,²² and the *Joint Guidelines*, partner countries are required to develop consultation and participation plans for engagement of stakeholders.

For the UN-REDD Programme, these plans should include an additional component which outlines a consultation process with representatives from relevant rights-holders groups in territories where REDD+ readiness activities will take place, in order to determine which activities will require FPIC and other related issues.

In the case of the National Programme Document (NPD), consultation on activities that should require FPIC should take place during the scoping/formulation and country validation phases and a proposal for further consultations on this topic should be included in the draft NPD.

In the case of the R-PP, consultation on activities that should require FPIC should take place as outlined in Section 1b. *Information Sharing and Early Dialogue with Key Stakeholder Groups*; and a proposal for further consultations on this topic should be included in Section 1c. *Consultation and Participation Process*.

In cases where the NPD or R-PPs have already been approved, partner countries should add a plan for consulting on which activities require FPIC to their existing consultation plan within six months of the finalization of these Guidelines and submit the revised plan to the relevant National Programme Steering Committee (or equivalent).

In accordance with the guidance provided in the *Joint Guidelines*, prior to the development of a REDD+ programme/activity, indigenous peoples living in voluntary isolation who may be affected should be identified in consultation with the relevant entities at the national, sub-national and/or local level to ensure that the programme/activity is developed in a way that avoids contact with these communities, including any attempts to contact them for purposes of consultation or obtaining their consent.

3.2 When is FPIC Required?

As stated above, it is for partner countries and relevant rights-holders to determine which activities require FPIC. The specific characteristics of the consultation procedure that is required will necessarily vary depending upon the nature of the proposed measure and the degree to which it may impact underlying rights.²³

The UNDRIP recognizes several situations in which the State is under an obligation to seek the consent of the indigenous peoples concerned. Particularly relevant to UN-REDD, States must consult

²¹ The National Programme Guidelines are designed to provide guidance to National Authorities, UN Agencies and Project Teams concerning activities to be undertaken, procedures, roles and responsibilities, and decisions made, during the National Programme cycle. As such, it will serve as operational guidance for formulating and implementing UN-REDD National Programmes from design to implementation to closing.

²² The R-PP template is available in English, French and Spanish at www.forestcarbonpartnership.org. See Sections 1b and 1c of the R-PP Template on “Information Sharing and Early Dialogue with Key Stakeholder Groups” and “Consultation and Participation Process”, respectively.

²³ [A/HRC/12/34](http://www.unhcr.org/refugees/article/47), para. 47

and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.²⁴ Additionally, UNDRIP specifies that consent is required for cases involving the proposed relocation of a group from its traditional lands.²⁵

In the same vein, the Inter-American Court of Human Rights has held that consent was required²⁶ in the cases of major development projects,²⁷ “large-scale development or investment projects that have a significant impact on the right of use and enjoyment of [tribal] ancestral territories,”²⁸ “major development or investment plans that may have a profound impact on the property rights,”²⁹ and cases involving relocation of indigenous peoples.³⁰ Similarly, in *Awes Tingni Community v. Nicaragua*, the Inter-American Court found in favor of the community where the Nicaraguan government had granted a natural resource concession on community lands without consent³¹ and violated the community’s property rights over their communal lands (which were not officially titled or otherwise recognized by the State).³²

The International Finance Corporation has found it useful to specifically enumerate the activities that require free, prior and informed consent in the latest draft of its Policy and Performance Standards related to indigenous peoples. The new standards state that not only must consultation be undertaken, but also the free, prior and informed consent of indigenous peoples must be obtained, if the proposed activities —(i) are to be located on or make commercial use of natural resources on lands subject to traditional ownership and/or under customary use by indigenous peoples; (ii) require relocation of indigenous peoples from traditional or customary lands; or (iii) involve commercial use of indigenous peoples’ cultural resources.³³

A first step for partner countries in determining whether consent should be sought is to carefully consider whether the proposed activity/policy will significantly impact on the lands, territories and/or resources of indigenous peoples and/or other relevant rights-holders. If it will, FPIC will likely be required.

In terms of determining what lands, territories, and resources might be subject to the consent standard, it is important to recognize that communal property rights based on traditional use, culture, and customary laws must be respected whether or not they are explicitly recognized by the national government.³⁴

²⁴ UNDRIP, Art. 32.2.

²⁵ UNDRIP, Art.10

²⁶ *Saramaka v. Suriname*, judgment of 28 November 2007, para. 134; see also [Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources*](#), OEA/Ser.L/V/II. Doc. 50/09 (30 December 2009), para 334.

²⁷ *Saramaka*, para 135 (“[T]he U.N. Special Rapporteur determined that ‘[f]ree, prior and informed consent is essential for the [protection of] human rights of indigenous peoples in relation to major development projects’.”).

²⁸ *Saramaka*, para 136.

²⁹ *Saramaka*, para 137.

³⁰ *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62, doc.26. (1984), 120.

³¹ As detailed in the Inter-American Commission on Human Rights findings in Report No. 27/98 (March 1998); see also *Mayagna (Sumo) Awes Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001) (hereinafter “*Awes Tingni*”), para 25.

³² See *Awes Tingni*, paras. 2, 25.

³³ [IFC Performance Standard 7 – V2 Indigenous Peoples](#), para 16. Note that these standards go into effect on January 1, 2012.

³⁴ See, e.g. *Awes Tingni*, paras. 140-155 (“the Mayagna Community has communal property rights to land and natural resources based on traditional patterns of use and occupation of ancestral territory. Their rights “exist even without State actions which specify them.” Traditional land tenure is linked to a historical continuity, but not necessarily to a single place and to a single social conformation throughout the centuries,” at para 140). See also *Centre for Minority Rights Development*

For consideration: Emerging examples of activities that may or may not require consent³²

Activities that may require consent:

- Proposed activity/policy that would include the removal of indigenous peoples and/or other relevant rights-holders from traditional or customary lands/territories;³³
- Proposed activity/policy that would include the removal of indigenous peoples' and/or other relevant rights-holders' cultural, intellectual, religious, and spiritual property;
- Proposed activity/policy that would include confiscation, occupation or damage of the lands, territories and/or resources of indigenous peoples and/or other relevant rights-holders;
- Decisions regarding whether pilot activities will take place on the lands/territories of indigenous peoples and/or other relevant rights-holders;³⁴
- Decisions regarding the conduct of activities that shall be implemented on the lands/territories of indigenous peoples and/or other relevant rights-holders;³⁵
- Decisions regarding benefit-sharing arrangements, when benefits are derived from the lands/territories/resources of indigenous peoples and/or other relevant rights-holders;³⁶
- Decisions regarding land tenure on the lands/territories of indigenous peoples and/or other relevant rights-holders;³⁷
- Decisions on forest and land-use zoning of forest reserves and/or sustainable forest management zones on the lands/territories of indigenous peoples and/or other relevant rights-holders;³⁸
- Decisions regarding access to biodiversity and ecosystem services (e.g., for food and medicines) on the lands/territories of indigenous peoples and/or other relevant rights-holders.³⁹

(Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, African Commission on Human and Peoples' Rights, Communication No. 276/2003 (2010), para. 209, which concluded "(1) traditional possession of land by indigenous peoples has the equivalent effect as that of a state-granted full property title; (2) traditional possession entitles indigenous peoples to demand official recognition and registration of property title; (3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless those lands have been lawfully transferred to third parties in good faith; and (4) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality."

³⁵ Please note that these lists are illustrative and not exhaustive with an aim to initiate discussion on this topic. The lists are therefore subject to change upon feedback from stakeholders, practitioners and governments.

³⁶ ILO Convention 169, Art. 16(2), June 27, 1989.

³⁷ The Inter-American Commission on Human Rights stated that there is a general international legal principle that indigenous peoples have the right to legal recognition of the specific forms of control, ownership, use and enjoyment of their territories and property. They also stated that international law requires "special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources and their right not to be deprived of this interest expect with fully informed consent. " *Mary and Carrie Dann v. U.S.*, Case no. 11.140, Report No. 75/02, Inter-Am. C.H.R., para.131, OEA/Ser.L/V/II.117, doc. Rev. 1(2003).

³⁸ *Id.*

³⁹ The right of indigenous peoples to derive benefits from development activities affecting their lands and resources is widely recognized under relevant international standards, including in Article 15(2) of ILO Convention 169, which state that indigenous peoples "shall wherever possible participate in the benefits of [development projects involving exploitation of mineral resources] and shall receive fair compensation for any damages which they may sustain as a result of such activities. See also Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization to the Convention on Biological Diversity, Art. 10, 12(2).

⁴⁰ ILO Convention 169 Art. 17(1), June 27, 1989.

⁴¹ *Supra* note 6; Consent require in cases where the development or investment plans for the exploitation of natural resources would deprive indigenous peoples of the capacity to use and enjoy their lands and other natural resources. *Saramaka v. Suriname*, judgment of 28 November 2007, para. 134; see also Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, OEA/Ser. L/V/II. Doc. 50/09 (30 December 2009).

⁴² ILO Convention 169, Art. 15, June 27, 1989.

For consideration: Emerging examples of activities that may or may not require consent (continued)

Activities that may not require consent, except to the extent that they include decisions identified to those listed above:

- Approval of a national REDD+ Readiness strategy;
- The provision of information sharing, awareness raising and capacity building activities;
- The identification of drivers of deforestation and forest degradation;
- Assessment of land use, forest law, policy, and governance;
- Assessment of key social and environmental risks and potential impacts (both positive and negative) of REDD+ strategy options;
- Technical and scientific studies (e.g. to determine a national reference level);
- Setting up a national monitoring system to measure, report and verify the effect of the REDD+ strategy on Greenhouse Gas emissions;
- Taking aerial photographs of land;
- Carbon stock measurement.

3.3 Who Seeks Consent?

The National Implementing Partner⁴³, as designated in the NPD⁴⁴ is responsible for seeking consent. The National Implementing Partner should designate more specifically who (e.g. ministry, department, institution, local authority) is responsible for seeking consent for each activity identified as requiring consent in the Consultation Plan.

3.4 Who Gives Consent?

Partner countries will seek consent from indigenous peoples that will be affected by the policy/activity in question. The recognition of indigenous peoples does not depend on the way any particular state may define the term.⁴⁵ Partner countries will also seek consent from other local communities that have customary and/or legal rights to the territory and/or resources that will be affected by the policy/activity in question.

Partner countries should engage indigenous peoples and other relevant rights-holders through representatives chosen by themselves and in accordance with their own procedures. It is strongly encouraged that all customary and formal rights-holders be represented in the decision-making process, especially women.

⁴³ As stated in Financial Regulation 27.02 of the UNDP Financial Regulations and Rules, an implementing partner is “the entity to which the Administrator has entrusted the implementation of UNDP assistance specified in a signed document along with the assumption of full responsibility and accountability for the effective use of UNDP resources and the delivery of outputs, as set forth in such document.” By signing a project document an implementing partner enters into an agreement with UNDP to manage the project and achieve the results defined in the relevant documents. Categories of possible implementing partners include: government entities (eligible government entities include: a ministry of the government; a department within a ministry; a governmental institution of a semi-autonomous nature, such as, the central bank, a university, a regional or local authority or a municipality); United Nations agencies; civil society organizations; approved inter-governmental organizations that are not part of the UN system.

⁴⁴ Or, where relevant, the FCPF and UN-REDD Readiness Preparation Proposal (R-PP) Template.

⁴⁵ See Annex II for more information regarding the identification of indigenous peoples.

3.5 Outcome of the FPIC Process

The FPIC process and outcome should be well-documented and made publicly available.

The territories and resources of communities that do not provide their consent should not be included in the proposed REDD+ policy/activity.

Communities may choose to grant their consent on the basis of certain conditions (e.g. benefits continue to be derived from the project). If these conditions are not met, the community may review and either reaffirm or refuse consent. This option may be invoked at any stage of programme implementation.

Given the significant time and resources that may have been invested during the process, the community should not be able to withdraw consent arbitrarily; thus, if the conditions upon which the original consent was based are being met, ongoing consent is implied. If there is disagreement over whether conditions are being met or not, communities can express their grievance with the relevant national level grievance mechanism.

4. Operational Framework for Seeking Free, Prior, and Informed Consent

Below is an outline of steps that should be undertaken by the partner countries when seeking FPIC in a community or territory.⁴⁶

a. Partner countries, in collaboration with relevant rights-holders, will undertake an FPIC Scoping Review, including the following components:

- A description of the proposed policy or activity;
- A description of the rights-holders, their governance structures and how they wish to be engaged, including the institutions that are empowered to represent them;
- A description of the legal status of the land, territory and resources concerned, including a description of the geographical area under formal, informal and/or customary use by the rights-holders, including maps and methodology used to establish the maps;
- An assessment of the social, environmental, and cultural impacts of the proposed policy/ activity on the rights-holders, including the specific impacts that have required the partner country to seek FPIC and how these impacts will be mitigated; and
- Resources allocated for seeking FPIC.

Special attention should be made by partner countries to support community efforts to describe many of these items in their own terms, including traditional uses of natural resources and community-based property rights.⁴⁷

Consultations on the FPIC Scoping Review should be undertaken until it has been mutually agreed upon.

b. Once the FPIC Scoping Review has been mutually agreed upon, the partner country, in consultation with the rights-holders, should develop an FPIC Proposal that outlines the proposed process to seek FPIC, including the following components:

- Capacity and information needs of the National Implementing Partner and/or rights-holders that need to be addressed before the FPIC process can take place;
- A designation of whether the process will require a facilitator, and if so, who it should be⁴⁸;
- Where and how the consultations will take place;
- A timeline for the proposed consultation process to seek FPIC;
- The appropriate language and media for information sharing and distribution;
- How decisions will be taken by the community;
- The geographical territory and communities that the decision will cover;
- How FPIC will be given, recognized and recorded;
- The role of others in the process (if any), including local government officials, UN agencies, institutions, donors, independent observers (strongly recommended) and other stakeholders;
- Methods of verifying the process, including, where relevant, participatory monitoring arrangements;

⁴⁶ See Annex III for Indicative Steps for a REDD+ Process to Respect the Right of Communities to FPIC (RECOFTC and GIZ, 2011)

⁴⁷ The case of the *Saramaka People v. Suriname* illustrates that indigenous and tribal peoples may have rights to resources even when national laws provide otherwise. As such, the National Implementing Partner and/or National Programmes may find it helpful to ask indigenous peoples and other forest dependent communities to assist in the identification of their traditional land and resource uses with respect to proposed REDD activities.

⁴⁸ See Annex IV for more information on the potential role of facilitators in the FPIC process.

- Terms and frequency of review of the agreement(s) to ensure that conditions are being upheld; and
- Process for voicing complaints and seeking recourse on the FPIC process and proposed policy or activity.

Consultations on the FPIC Proposal should be undertaken until it has been mutually agreed upon. The FPIC Scoping Review and FPIC Proposal should be combined into one document and signed (or agreed upon in a culturally appropriate manner) by all relevant parties. Once this document has been signed/agreed upon, the FPIC process can proceed as outlined in the Proposal.

- c. **In cases where there is a question on the validity of the FPIC process, an independent evaluation should be undertaken** by an institution, to be mutually agreed by all relevant rights-holders, to verify that the process was aligned with the definition of each of the terms of FPIC outlined in section 2 above.

5. Grievance and Accountability

The provision of mechanisms to address grievances and monitor compliance with standards, guidelines and policies is of critical importance to ensuring the UN-REDD Programme meets its objectives in a transparent, legitimate, and effective way. When communities feel they have been negatively impacted as a result of the UN-REDD Programme, it is essential that they are able to seek recourse in a timely manner.

5.1 Accountability at the Global level

At the global level, the UN-REDD Programme is in the process of developing an accountability mechanism that will address grievances from individuals and communities affected by the UN-REDD Programme as well as reports of non-compliance with its guidance and policies.

The objectives of the UN-REDD Programme accountability mechanism include the following:

- To provide an opportunity for hearing and resolving specific grievances of people affected by the UN-REDD Programme;
- To provide access to processes that empower and protect the rights and interests of vulnerable groups and afford them greater voice and a fair hearing in the development and implementation of REDD+ strategies and programmes;
- To strengthen and promote the use of existing local and national dispute resolution processes; and
- To enhance compliance with environmental and social guidance and policies applicable to the UN-REDD Programme.

Specific activities of the mechanism are likely to include the following:

- Receiving and determining eligibility of requests;
- Conducting thorough and objective reviews of policy compliance, including in-country inspections, interviews of project-affected people, and comprehensive information gathering to allow a factual determination of the issues raised and a reliable basis for any recommendations made;
- Issuing reports with findings on policy compliance to UN-REDD Programme staff and requesters;
- Issuing draft recommendations for bringing the project into compliance to UN-REDD Programme staff and requesters;
- Receiving comments from, and consulting with, UN-REDD Programme staff, the requesters and host governments on any recommendations;
- Issuing final reports with findings and recommendations;
- Providing support for flexible dispute resolution processes, including third-party mediations, for grievances that are not adequately addressed at the national or project level;
- Monitoring implementation of decisions from the grievance and compliance mechanisms;
- Issuing reports that provide systemic advice based on lessons learned from past cases; and
- Conducting outreach to potentially affected persons explaining UN-REDD Programme grievance and compliance mechanisms.

Potential remedies could range from findings of non-compliance to recommendations for improving implementation and bringing the programme back into compliance to the suspension of disbursements.

5.2 Existing Requirements for Partner Countries to Establish a Grievance Mechanism

At the national level, National Programmes are required to establish grievance mechanisms. This requirement is already outlined in the FCPF and UN-REDD Readiness Preparation Proposal (R-PP) Template, where REDD+ countries will:

- Conduct a rapid assessment of existing formal or informal feedback and grievance mechanisms, including an assessment of how existing mechanisms could be modified to ensure that the eventual mechanism is accessible, transparent, fair, affordable, and effective in responding to challenges in REDD-plus implementation;
- Develop a framework for the proposed grievance mechanism, including steps that will be taken to define the structure, functioning and governance of such a mechanism, taking into account customary grievance approaches and best practices where feasible; and
- Describe how information sharing and consultation on the proposed mechanism will occur.

UN-REDD partner countries will be required to undertake a similar assessment and proposal for the development of a national level grievance mechanism.

5.3 Principles

Grievance and accountability mechanisms must be based on principles that will enable their success. A mechanism established with the principles of independence, fairness, transparency, professionalism, accessibility, effectiveness, and subsidiarity is more likely to create the necessary trust in the process of the institutions' leadership, staff, operational partners, affected groups, and civil society stakeholders. The process must also be tailored to the institution.

- **Independence:** Independence requires that the mechanism be established and operate without undue influence from the institution's operational decision-makers, States, NGOs or complainants. Independence requires that those who address complaints to the mechanism would be screened and rejected if they have been involved in self-dealing or nepotism; they would recuse themselves if there is an actual or potential conflict of interest.
- **Fairness:** Fairness and objectivity require the mechanism to give equal weight to the arguments of all sides to conduct independent and impartial investigations. The mechanism's procedures should treat all parties fairly, and fairness should be an expectation of all outcomes.
- **Transparency:** The principle of transparency requires public comment and participation in the design and operation of the mechanism, and clear, demonstrable and publicly available rules of procedure. In addition, the mechanism should make public its methods of investigation, factual findings, non-confidential party submissions, and reports via a website and documents publicly available. Transparency also requires that the mechanism make efforts to bring public awareness to its existence and operations.
- **Professionalism:** The mechanism's decision-makers and staff should be expected to comport with international standards of discretion and professionalism; the mechanism should be able to hire consultants to bring specific expertise when needed.

- **Accessibility:** In order to be accessible to affected people, the mechanism should maintain open lines of communications and provide information in languages and formats required to allow the greatest access practicable to affected people. Accessibility also requires that there are no unnecessary barriers to entering the mechanism's processes.
- **Effectiveness:** The mechanism should be evaluated against its effectiveness in objectively evaluating claims from affected communities and in communicating those findings back to the community, the institution, and the public. Effectiveness also requires that the mechanism operate in a timely and responsive manner.
- **Subsidiarity:** Assuming that a fair, effective and objective grievance mechanism is available, grievances should be addressed as close to the administrative level and the mechanism should use indigenous or local dispute-resolution processes whenever possible.
- **Tailored to the Institution:** The mechanism must be designed to take into account the particular features of the institution. The mechanism must be tailored, in this case, to the UN-REDD Programme's (and its agencies') organizational structure, type of operations, legal restrictions, relevant policies, existing accountability framework, and institutional culture.

5.4 Information Disclosure

Information disclosure is a key element required to ensure transparency and effectiveness for grievance and accountability mechanisms. Information that should be routinely disclosed includes: basic information and detailed rules of procedure for the compliance review and grievance process; instructions for how to file a complaint; a registry of complaints and their status; any compliance review or disclosable output from any grievance process; and annual reports describing the mechanism's activities.

5.5 Outreach

Establishing grievance and accountability mechanisms is only the first step; project-affected people still have to use it—and to use it, they need to know about it. Public outreach thus needs to be an important part of the mechanisms' mandate. Sufficient resources should be made available to ensure that the mechanism can be proactive in educating potential claimants about the compliance review mechanism and grievance processes. Outreach activities could include issuing information brochures and designing websites in multiple languages; ensuring clear website access from the institution's home page; speaking at conferences; meeting with civil society organizations; training staff to publicize the mechanism; and outreach workshops, including at the community level.

5.6 Process and Next Steps

The UN-REDD Programme has established an interagency working group to review the policies and procedures for grievance and compliance at FAO, UNDP and UNEP. Following this review, the group will prepare a proposal for establishing a global level accountability mechanism. The proposal will take into account recommendations made during the three consultations on FPIC and grievance mechanisms, which forms the basis of these Guidelines. The proposal will then be shared for external consultation and revised based on comments received. The UN-REDD Programme is also in the process of developing elaborated guidelines on national-level grievance mechanisms, which will also be shared for external consultation. In the interim, stakeholders may direct grievances to both the UN-REDD Programme Secretariat and the UN Resident Coordinator in country for review and appropriate action, in line with the principles outlined above.

Annex I: Types of Participation⁴⁹

Types of Participation	
Information Sharing	Mostly a one way flow of information, e.g., from government to public, or public to government. Objectives are to keep actors informed, provide transparency, and build legitimacy. This can be done through simple outreach approaches (e.g., website, fact sheets, press releases, presentations).
Consultation	Two-way flow of information and the exchange of views. Involves sharing information, garnering feedback and reactions, and in more formal consultation processes, responding back to stakeholders about how their recommendations were addressed (including if they were not, why not). Information exchanges may occur through meeting with individuals, public meetings, workshops, soliciting feedback on documents, etc.
Collaboration	Joint activities in which the initiator invites other groups to be involved, but retains decision-making authority and control. Collaboration moves beyond collecting feedback to involving external actors in problem-solving, policy design, and monitoring and evaluation. Approaches may include advisory committees, joint missions, and joint implementation activities.
Joint decision-making	Collaboration where there is shared control over a decision made. Shared decision-making is useful when the external actor's knowledge, capacity, and experience are critical for achieving policy objectives.
Consent	Consent refers to a freely given decision from the community based on full, objective information. A decision made by the community that will determine how and if an activity or action will be carried out.
Empowerment	Transfers control over decision-making, resources, and activities from the initiator to other stakeholders. When external actors, acting autonomously and in their own interests, can carry out policy mandates without significant government involvement or oversight (e.g., local natural resource management zones).

⁴⁹ Adapted from: Foti, J., with L.deSilva, H.McGray, L.Shaffer, J.Talbot, J.Werksman (2008). [Voice and Choice: Opening the Door to Environmental Democracy](#), World Resources Institute; and Daviet, F. (2011). [A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices](#), for FCPF and the UN-REDD Programme..

Annex II: Identifying Indigenous Peoples⁵⁰

The term “indigenous peoples”⁵¹ has become a general denominator for distinct peoples who, through historical processes, have been pursuing their own concept and way of human development in a given socio-economic, political and historical context. Throughout history, these distinct groups of peoples have tried to maintain their group identity, languages, traditional beliefs, worldviews and way of life and, most importantly, the control and management of their lands, territories and natural resources, which allow and sustain them to live as peoples.

Who are indigenous peoples?

The international community has not adopted a common definition of indigenous peoples and the prevailing view today is that no formal universal definition is necessary for the recognition and protection of their rights. However, there have been attempts to outline the characteristic of indigenous peoples. The ILO’s Indigenous and Tribal Peoples Convention, 1989 (No. 169) applies to:

- Tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
- Peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.⁵²
- The Convention also states that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.⁵³

The *Study on the Problem of Discrimination against Indigenous Populations* (the “Martínez Cobo Study”) offers the following “working definition”:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”⁵⁴

⁵⁰ Excerpt from [UN Resource Kit on Indigenous Peoples Issues](#), United Nations, New York, 2008

⁵¹ In almost all indigenous languages, the name of a group simply refers to “people”, “man” or “us”. In many cases, the group name also includes the name of the place with which the group identifies (people of X, Y places) or adjectives such as “free”, “stand up”, or “black”, “red” and so forth. In any event, it is clear that the term “indigenous” has been adopted by many “indigenous” peoples as an instrument mostly used at the international level to advance their rights and improve their situation.

⁵² ILO Convention No. 169, Art. 1, subsection 1.

⁵³ ILO Convention No. 169, Art. 1, subsection 2.

⁵⁴ Cobo, J. M. (1986/7). *Study of the Problem of Discrimination Against Indigenous Populations*. UN Doc E/CN.4/Sub.2/1986/7.

The *Working Paper on the Concept of “Indigenous People”* prepared by the Working Group on Indigenous Populations lists the following factors that have been considered relevant to the understanding of the concept of “indigenous” by international organizations and legal experts:

- Priority in time, with respect to the occupation and use of a specific territory;
- The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;
- Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.⁵⁵

Self-identification as indigenous or tribal is considered a fundamental criterion and this is the practice followed in the United Nations and its specialized agencies, as well as in certain regional intergovernmental organizations.⁵⁶ Article 33 of the UN Declaration on the Rights of Indigenous Peoples refers to the rights of indigenous peoples to decide their own identities and membership procedures.

Understanding who indigenous peoples are

- They identify themselves as indigenous peoples and are, at the individual level, accepted as members by their community;
- They have historical continuity or association with a given region or part of a given region prior to colonization or annexation;
- They have strong links to territories and surrounding natural resources;
- They maintain, at least in part, distinct social, economic and political systems;
- They maintain, at least in part, distinct languages, cultures, beliefs and knowledge systems;
- They are resolved to maintain and further develop their identity and distinct social, economic, cultural and political institutions as distinct peoples and communities; and
- They form non-dominant sectors of society.

In some countries, it is controversial to use the term “indigenous”. There may be local terms (such as tribal, first people, ethnic minorities, traditional communities) or occupational and geographical labels (hunter-gatherers, pastoralists, nomadic or semi-nomadic, hill people, etc.) that, for all practical purposes, can be used to refer to “indigenous peoples”. In some cases, however, the notion of being indigenous has pejorative connotations and people may choose to refuse or redefine their indigenous origin. Such choices must be respected, while at the same time any discrimination based on indigenous peoples’ cultures and identity must be rejected. This different language use is also reflected in international law.

⁵⁵ Daes, E. A. (1996). *Working Paper on the Concept of “Indigenous People”*, prepared for the Working Group on Indigenous Populations. UN Doc E/CN.4/Sub.2/AC.4/1996/2.

⁵⁶ There are two additional resources that are particularly relevant in the specific context of Africa: the definition included in the *Report of the African Commission on Human and Peoples’ Rights Working Group on Indigenous Populations/Communities*, adopted by the African Commission at its 28th session (available from <http://www.iwgia.org/sw2186.asp>) and the *Response Note to the “Draft Aide-mémoire of the African States on the UN Declaration on the Rights of Indigenous Peoples”*, prepared by the African Group of Experts (available from: <http://www.iwgia.org/sw21505.asp>).

The UN Declaration on the Rights of Indigenous Peoples, adopted in 2007, uses the term “indigenous” in a widely inclusive manner, while the only international Conventions on the subject—the ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169) and its 1957 predecessor (Convention No. 107) use the terminology “indigenous and tribal”. While these are considered to have similar coverage at the international level, not all Governments agree.

How to identify indigenous peoples

The most fruitful approach is to identify, rather than attempt to define, indigenous peoples in a specific context. Indigenous peoples’ representatives themselves have taken the position that no global definition is either possible or desirable. Identification is a more constructive and pragmatic process, based on the fundamental criterion of self-identification. The identification of indigenous peoples must thus be undertaken with the full participation of the peoples concerned. The purpose of the exercise is to gain a better understanding of the specific situations of exclusion, discrimination and poverty faced by particular groups of peoples so that public policies can address these issues by developing targeted programmes and inclusive processes.

Below is a list of some practical questions suggested for consideration when working on matters involving indigenous peoples in the preparation of development frameworks. Local indigenous organizations and leaders, and academic constituencies in addition to government, may be well placed to help answer these questions. The list is neither exhaustive nor mandatory, but provides elements for consideration and reflection as part of any preparatory work.

Identifying indigenous peoples

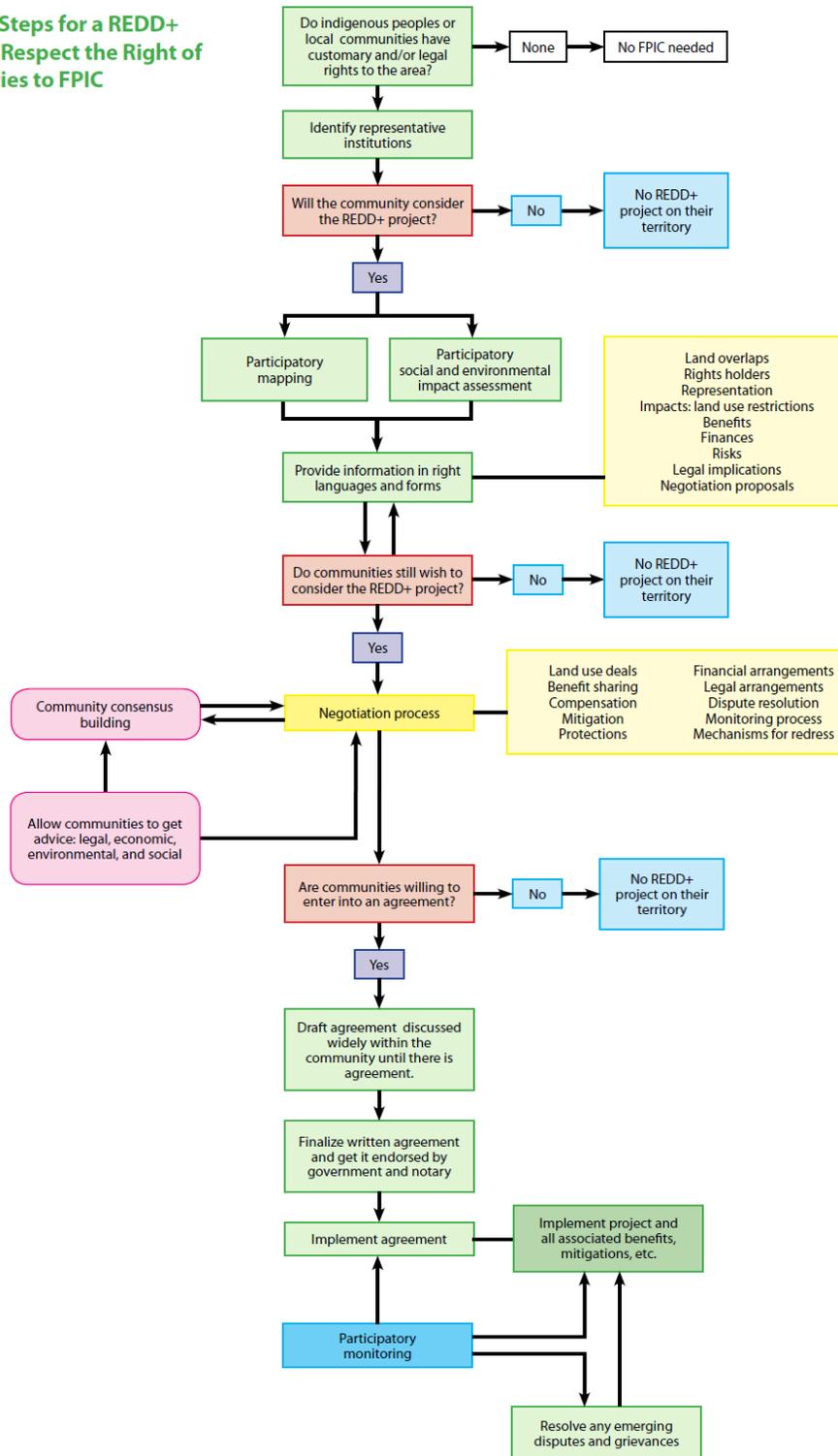
- Are there peoples identifying themselves as indigenous?
- Are there local terms that identify indigenous peoples?
- If so, are they recognized in legislation (the Constitution or other laws, for example)?
- What term is used in the national policy discourse and mainstream media with regard to these groups of peoples to distinguish them from the dominant societal group?
- Are there provisions in relevant laws regarding these groups’ collective rights as peoples/communities or any other specific group rights?
- Who are these groups and what are these provisions?
- What is their general situation compared to the mainstream dominant society?
- Has a census been conducted in recent years in the country?
- If so, are these peoples reflected in the census?
- If so, how are they identified as a specific group of people? By self-identification or other criteria?
- Is any other disaggregated data on these specific groups of people available or can it be generated?

Indigenous peoples often have much in common with other marginalized segments of society, i.e., lack of or very poor political representation and participation, lack of access to social services, and exclusion from decision-making processes on matters affecting them directly or indirectly. However, the situation of indigenous peoples is different because of their history and their intimate relationship with their lands, territories and resources which, in many cases, not only provide them with the economic means for living but, more importantly, sustain them as peoples. As distinct peoples, indigenous peoples claim the right to self-determination, including the right to control their own political, social, economic and cultural development as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention 169, and other human rights instruments.

Furthermore, many indigenous peoples have a profound spiritual relationship with their land and natural resources. Indigenous peoples' rights to manage their traditional lands, territories and relevant resources are fundamental for their physical and spiritual survival. However, all too often, indigenous communities have been displaced and dislocated from their ancestral lands in the name of development, by oil and gas or other natural resource exploitation projects, the construction of dams, conservation parks, roads or other national development priorities, which have been designed without the free, prior and informed consent of indigenous peoples—and indeed, often without any form of consultation with them at all.

Annex III: Indicative Steps for a REDD+ Process to Respect the Right of Communities to FPIC⁵⁷

Indicative Steps for a REDD+ Process to Respect the Right of Communities to FPIC



⁵⁷ Excerpt from [Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development](#), RECOFTC and GIZ, February 2011.

Annex IV: The Role of Facilitators in Supporting the FPIC Process

Facilitators should be sensitive to the cultural context, with technical knowledge of the issue under consideration. Facilitators are mutually accountable to the UN-REDD Programme, the government and the community; they must be trustworthy and competent.

Facilitators, in cooperation with the Government and stakeholders, are responsible for ensuring that the following key arrangements are part of the FPIC process:

- Full, accurate information is communicated that is easily understandable for everyone, including innovative and creative forms, in the most appropriate language, to communicate issues, as well as access to other sources of information;
- Decision-making process is determined by the community without interference;
- Timeline to undertake the decision-making process is decided by the community;
- The language in which they wish to be addressed, including the language used for written materials and to convey decisions, is determined by the community;
- Additional information be sought from community members and they should be encouraged to verify information;
- Transparent, accurate, and complete information is communicated; positive and negative and potential short-term and long-term impacts, risks and benefits are described;
- Information reaches all community members;
- A secure, culturally appropriate and trusted decision-making environment.

Facilitators should support the community to determine and document the collective decision-making process:

- Use, build on, or improve existing transparent and participatory consultation and consent processes (e.g., raising hands, voting, signing, deferring to leaders, etc.);
- Document process, discussion, comments, questions asked for decision, the decision, and/or terms of agreement;
- Maintain a record of the result/decision (disaggregated by gender, income level, if possible), announce the result, and hold a self-evaluation process (e.g., village head signs) - if information is disaggregated, record the relevance of this disaggregation to the decision, and to follow-up activities.

Facilitators should support capacity building for the community to effectively review agreement conditions to ensure that they are met, including the delivery and proper distribution of benefits agreed.

Annex V: Tools and Resources

General

[UN Resource Kit on Indigenous Peoples Issues](#), United Nations, New York, 2008, Prepared by the Secretariat of the United Nations Permanent Forum on Indigenous Issues/DSPD/DESA in cooperation with the International Labour Organization, the United Nations Children's Fund, the United Nations Development Programme, the United Nations Population Fund and the Secretariat of the Convention on Biological Diversity

[A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices](#), Florence Daviet, WRI for FCPF and the UN-REDD Programme, June 2011

FPIC

[Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development](#), RECOFTC and GIZ, February 2011

[Guide to Free, Prior and Informed Consent](#), Oxfam, June 2010

[Free, Prior and Informed Consent: Making FPIC work for forests and peoples](#), Colchester, M. 2010. The Forests Dialogue, New Haven, CT, USA.

[REDD+ Community Protocols: A Community Approach to Ensuring the Local Integrity of REDD](#), Natural Justice.

[The Forests Dialogue \(TFD\) Dialogue Stream](#), New Haven, CT, USA.

Grievance Mechanisms

[A Guide to Designing and Implementing Grievance Mechanisms for Development Projects](#), The Office of the Compliance Advisor/Ombudsman for the International Finance Corporation (IFC) Multilateral Investment Guarantee Agency (MIGA), 2008

[Addressing Grievances from Project-Affected Communities: Guidance for Projects and Companies on Designing Grievance Mechanisms](#), International Finance Corporation (IFC), Good Practice Note, Number 7, September 2009

Feedback Matters: Designing Effective Grievance Redress Mechanisms for Bank-Financed Projects Part 1: The Theory of Grievance Redress, and [Part 2: The Practice of Grievance Redress](#)

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